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OGC Has Reviewed

2 December 1970

MEMORANDUM FOR: Mr. Houston

SUBJECT : Procedural Steps Prior to the Hearing

1. Factors to be borne in mind concerning the procedural steps prior to hearing are:

a. The final decision on a complaint of discrimination is to be by the agency head or his designee "based on information in the complaint file" (713.221).

b. The agency is to establish a complaint file containing all documents pertinent to the complaint. The file shall include copies of the written report of the EEOC, the complaint, the investigative file, the written record of the terms of the adjustment of the complaint, copies of any letters to the complainant, and the record of the hearing, together with the appeals examiner's findings, analysis and recommended decision on the merits. "The complaint file shall not contain any document that has not been made available to the complainant" (713.230).

c. On appeal to the Commission, its Board of Appeals and Review will review all aspects "including the complaint file", and may remand to the agency or order corrective action (713.234).

d. Complaints are to be resolved promptly. When a complaint is not resolved within the applicable time limit (usually sixty (60) days from the date of filing a complaint with the EEOC) the complainant may appeal to the Commission for a review of the reasons for the delay. The Commission may require an agency to proceed promptly, or it may accept an appeal by the complainant without further agency action (713.220). Otherwise, there is no harm in delay.

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2. An agency shall require that a person who believes he has been discriminated against for racial reasons to consult with an EEOC (713.2.3(a)).

3. The EEOC must make adequate inquiry into the matter, seek an informal solution, counsel the aggrieved person concerning the merits of the matter, keep a record of his counseling activities and brief the EEOC on those activities, and, when a complaint of discrimination has been accepted, submit a written report to the EEOC "with a copy to the aggrieved person", summarizing his actions and advice both to the agency and to the aggrieved person. In so far as is practical, the EEOC is to conduct his final interview with the aggrieved person not later than fifteen (15) days from the date on which the matter is called to his attention. In his final interview with the aggrieved person, the EEOC shall advise the aggrieved person "of his right to file a complaint of discrimination with the organization's" EEOC and of the time limits governing the acceptance of a complaint (713.213(a)).

4. An agency shall require that complaints be submitted in writing. The agency may accept the complaint for processing only if:

a. the complainant took up the matter with the EEOC within fifteen (15) days of the date of the discriminating action; and

b. the complainant submits his written complaint to the EEOC within fifteen (15) days of the date of his final interview with the EEOC.

The agency may waive these time limits (713.214).

5. In any stage in a complaint, including the counseling stage, the aggrieved person shall be free from restraint and coercion and shall have a reasonable amount of official time to present his complaint. Additionally, he "shall have the right to be accompanied, represented and advised by a representative of his own choosing" which representative, if he is an employee of the government, also shall be free from restraint and coercion and shall have a reasonable amount of official time to present the complaint (713.214).

6. The head of the agency or his designee may reject a complaint because it was not timely filed, or cancel it because the complainant failed to prosecute it. In such an event the head of the agency or his designee shall so inform the complainant and his representative by letter "which shall inform the complainant of his right of appeal to the Commission" (713.215).

7. When a complaint is accepted, the EEOC shall provide for the prompt investigation of the complaint. The investigator shall occupy a position in the agency "which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose." The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint, as compared with the treatment of other members in the complainant's component, and any policies and practices relating to the work situation which may constitute or may appear to constitute racial discrimination. An investigative file shall be assembled to include the various documents and information acquired during the investigation, including affidavits of the complainant, of the alleged discriminatory official, and of the witnesses, and copies of, or extracts from, records, policy statements and regulations relevant to the complaint or to the general environment out of which the complaint arose. "The agency shall furnish the complainant or his representative a copy of the investigative file" (713.216).

8. After the complainant has reviewed the investigative file, the agency shall attempt an informal adjustment of the complaint. If an adjustment is arrived at, the terms of the adjustment shall be reduced to writing and shall be made a part of the complaint file. If adjustment is not reached, the complainant shall be notified, in writing, of the proposed disposition. The notice shall advise the complainant of his right to a hearing with subsequent decision by the agency head or his designee, or a decision by the agency head or his designee without a hearing. The agency shall allow the complainant seven (7) calendar days to indicate that he wishes to have a hearing. If he does not so act within seven (7) days, the EEOC may adopt as the decision of the agency the proposed disposition of the complaint

indicated in the notice sent to the complainant above. In such event, the EEOO shall transmit his decision by letter to the complainant and his representative which shall inform the complainant of his right to appeal to the Commission, and of the time limit for such appeals. If the EEOO does not issue a decision, the complaint, together with the complaint file, shall be forwarded to the agency head or his designee for decision (713.217).



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Associate General Counsel

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